

Application No. 09/497,590
Amendment dated March 31, 2006
Reply to Office Action of December 1, 2005

REMARKS

Applicant amended claims 105 and 149 to further define Applicant's claimed invention.

In the Office Action, the Examiner objected to claim 169 as being dependent upon a rejected base claim, but being allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner rejected claims 149-165, 167, 168, 170, 171, 173-180, 182, 183, 185, and 186 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,878,915 to Brantigan ("Brantigan") in view of U.S. Patent No. 3,848,601 to Ma et al. ("Ma"). Applicant respectfully traverses the Examiner's rejection. The Examiner contends that "[i]t would have been obvious to one having ordinary skill in the art at the time that the invention was made that the passage of the guide disclosed by Brantigan could be fabricated with a non-circular cross-section as taught by Ma in order to be able to insert a non-circular or circular cutting tool into the guide." (Office Action, paragraph bridging pages 2-3). Applicant respectfully disagrees with the Examiner's contention because non-circular bone cutting instruments such as curettes can be inserted through circular passages such as the passage shown in sleeve 22 of Brantigan. (See Brantigan, Fig. 4). Moreover, the device in Ma that the Examiner is relying on as being a "guide" (i.e., cutting end 44a of bone cutter 40) is connected to a "cylindrical passage 42." (Ma, col. 3, lines 23-25; Figs. 4a and 5). Therefore any bone cutting device having a non-circular cross section inserted in cutting end 44a of the Ma bone cutter would pass through a cylindrical passage, which has a circular cross section like that disclosed by Brantigan. Accordingly, Applicant respectfully submits that the combination of Brantigan with Ma cannot be maintained. (See MPEP § 2143.01, "the Prior Art Must Suggest the Desirability of the Claimed Invention," page 2100-129, col. 2 (May 2004)).

Application No. 09/497,590
Amendment dated March 31, 2006
Reply to Office Action of December 1, 2005

The Examiner contends that Brantigan discloses "extension portions (the portions of 22 that extends outward near 23 but don't including 23)." (Office Action, paragraph bridging pages 2-3). Independent claim 149, as now amended, recites that the extension has "a height between said upper and lower surfaces and a length sufficient to properly align and distance apart the adjacent vertebral bodies from at least in part within the disc space between the adjacent vertebral bodies." The portions of the Brantigan sleeve that the Examiner contends is an "extension" do not distance apart the adjacent vertebral bodies "from at least in part within the disc space between the adjacent vertebral bodies" as recited in independent claims 149. Applicant submits that the Examiner's rejection of claims 149-165, 167, 168, 170, 171, 173-180, 182, 183, 185, and 186 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan in view of Ma has been overcome.

The Examiner rejected claims 166, 172, 181, 184, and 187 under 35 U.S.C. § 103(a) as being unpatentable over Brantigan and Ma, and further in view of U.S. Patent No. 4,537,185 to Stednitz. Applicant submits that the rejections over claims 166, 172, 181, 184, and 187 are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits that independent claim 149 is patentable and that dependent claims 150-187 dependent from independent claim 149, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any

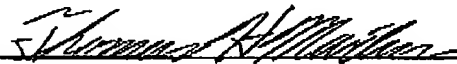
Application No. 09/497,590
Amendment dated March 31, 2006
Reply to Office Action of December 1, 2005

fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: March 31, 2006

By: 
Thomas H. Martin
Registration No. 34,383

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (330) 877-0700
Facsimile: (330) 877-2030